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MICHAEL P. MCGRATH and
ALL RISKS, LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT

CRUMP INSURANCE SERVICES, INC.
a corporation and DOES 1-50, inclusive,

Plaintiff,

vs.

MICHAEL P. MCGRATH, an individual,
ALL RISKS, LTD., a corporation, and
Does 1 through 50, inclusive

Defendants.

Case No. C 07 4636

**ANSWER OF DEFENDANTS MICHAEL P.
MCGRATH AND ALL RISKS, LTD. TO
PLAINTIFF'S COMPLAINT FOR
DAMAGES**

Defendants Michael P. McGrath ("McGrath") and All Risks, Ltd. ("All Risks")
(collectively "Defendants") hereby answer the Complaint for Damages ("Complaint") filed by
Plaintiff Crump Insurance Services, Inc. as follows:

THE PARTIES

1. In answer to Paragraph 1 of the Complaint, based upon information and belief
Defendants admit the allegations contained therein.

2. In answer to Paragraph 2 of the Complaint, based upon information and belief Defendants admit the allegations contained therein.

3. In answer to Paragraph 3 of the Complaint, Defendants admit the allegations contained therein.

4. In answer to Paragraph 4 of the Complaint, Defendants admit the allegations contained therein.

5. In answer to Paragraph 5 of the Complaint, Defendants admit that it correctly characterizes and summarizes the allegations and claims made in the Complaint, but deny that these allegations and claims have merit.

6. In answer to Paragraph 6 of the Complaint, Defendants admit that it correctly characterizes and summarizes the allegations and claims made in the Complaint, but deny that these allegations and claims have merit.

BACKGROUND FACTS

7. In answer to Paragraph 7 of the Complaint, Defendants admit that McGrath signed an agreement entitled "Memorandum of Agreement" on or about June 7, 1996. Based upon information and belief, Defendants admit that Plaintiff Crump Insurance Services, Inc. is the successor in interest to Crump E&S of San Francisco Insurance Services, Inc. Defendants deny the remaining allegations in Paragraph 7 of the Complaint.

8. In answer to Paragraph 8 of the Complaint, Defendants admit that, on or about April 30, 2007, McGrath signed a "Broker Compensation Agreement." Defendants deny the remaining allegations in Paragraph 8 of the Complaint.

9. In answer to Paragraph 9 of the Complaint, Defendants deny each and every allegation contained therein.

10. In answer to Paragraph 10 of the Complaint, Defendants state that the Memorandum of Agreement speaks for itself, and to the extent that the allegations in this Paragraph do not accurately state the contents of the Memorandum of Agreement, they are denied. In addition, to the extent that Paragraph 10 purports to allege that McGrath breached the Memorandum of Agreement, Defendants deny all such allegations.

1 11. In answer to Paragraph 11 of the Complaint, Defendants state that the
2 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this
3 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are
4 denied. In addition, to the extent that Paragraph 11 purports to allege that McGrath breached the
5 Memorandum of Agreement, Defendants deny all such allegations.

6 12. In answer to Paragraph 12 of the Complaint, Defendants state that the
7 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this
8 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are
9 denied. In addition, to the extent that Paragraph 12 purports to allege that McGrath breached the
10 Memorandum of Agreement, Defendants deny all such allegations.

11 13. In answer to Paragraph 13 of the Complaint, Defendants state that the
12 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this
13 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are
14 denied. In addition, to the extent that Paragraph 13 purports to allege that McGrath breached the
15 Memorandum of Agreement, Defendants deny all such allegations.

16 14. In answer to Paragraph 14 of the Complaint, Defendants state that the
17 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this
18 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are
19 denied. In addition, to the extent that Paragraph 14 purports to allege that McGrath breached the
20 Memorandum of Agreement, Defendants deny all such allegations.

21 15. In answer to Paragraph 15 of the Complaint, Defendants admit that McGrath
22 accepted an offer of employment from All Risks, LLC on or about June 3, 2007. Defendants
23 further admit that, prior to June 3, 2007, McGrath decided that he would terminate his
24 employment with Plaintiff and begin employment with All Risks, LLC. Defendants deny the
25 remaining allegations contained in Paragraph 15 of the Complaint.

26 16. In answer to Paragraph 16 of the Complaint, Defendants deny each and every
27 allegation contained therein.
28

25. In answer to Paragraph 25 of the Complaint, Defendant McGrath admits that Plaintiff did not give written consent for McGrath to utilize confidential information. Defendant McGrath denies the remaining allegations contained in Paragraph 25 of the Complaint.

26. In answer to Paragraph 26 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

27. In answer to Paragraph 27 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

28. In answer to Paragraph 28 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

29. In answer to Paragraph 29 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

30. In answer to Paragraph 30 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

31. In answer to Paragraph 31 of the Complaint, Defendant McGrath admits that he did not provide Plaintiff with 15 days advance notice of his termination, but denies that he was required to provide 15 days advance notice of his termination. Defendant McGrath denies the remaining allegations contained in Paragraph 31 of the Complaint.

32. In answer to Paragraph 32 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

33. In answer to Paragraph 33 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

SECOND CAUSE OF ACTION

Misappropriation of Trade Secrets –Against All Defendants

34. Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 33 of the Complaint.

35. In answer to Paragraph 35 of the Complaint, Defendants admit that McGrath had access to client lists and expiration lists during his employment with Plaintiff. Defendants lack sufficient information to admit or deny the allegation that McGrath had access to “underlying

1 client information” and “information regarding co-employees” during his employment with
2 Plaintiff because the meaning and scope of those terms are unclear. Defendants deny the
3 remaining allegations contained in Paragraph 35 of the Complaint.

4 36. In answer to Paragraph 36 of the Complaint, Defendants acknowledge that during
5 the course of his employment with Plaintiff, McGrath was apprised of certain things attendant to
6 his status as Plaintiff’s employee, but Defendants lack sufficient information to admit or deny the
7 allegation that Plaintiff provided “information” to McGrath because the meaning and scope of
8 that term is unclear. Defendants deny the remaining allegations contained in Paragraph 36 of the
9 Complaint.

10 37. In answer to Paragraph 37 of the Complaint, Defendants deny each and every
11 allegation contained therein.

12 38. In answer to Paragraph 38 of the Complaint, Defendants deny each and every
13 allegation contained therein.

14 39. In answer to Paragraph 39 of the Complaint, Defendants deny each and every
15 allegation contained therein.

16 40. In answer to Paragraph 40 of the Complaint, Defendants deny each and every
17 allegation contained therein.

18 41. In answer to Paragraph 41 of the Complaint, Defendants deny each and every
19 allegation contained therein.

20 42. In answer to Paragraph 42 of the Complaint, Defendants deny each and every
21 allegation contained therein.

22 **THIRD CAUSE OF ACTION**

23 **Breach of Fiduciary Duty – Against Defendant McGrath**

24 43. Defendants reallege and incorporate by reference their answers to Paragraphs 1
25 through 42 of the Complaint.

26 44. In answer to Paragraph 44 of the Complaint, Defendant McGrath denies each and
27 every allegation contained therein.
28

1 45. In answer to Paragraph 45 of the Complaint, Defendant McGrath denies each and
2 every allegation contained therein.

3 46. In answer to Paragraph 46 of the Complaint, Defendant McGrath denies each and
4 every allegation contained therein.

5 47. In answer to Paragraph 47 of the Complaint, Defendant McGrath denies each and
6 every allegation contained therein.

7 48. In answer to Paragraph 48 of the Complaint, Defendant McGrath denies each and
8 every allegation contained therein.

9 49. In answer to Paragraph 49 of the Complaint, Defendant McGrath denies each and
10 every allegation contained therein.

11 **FOURTH CAUSE OF ACTION**

12 **Intentional Interference with Prospective Economic Advantage (Clients) –**

13 **Against All Defendants**

14 50. Defendants reallege and incorporate by reference their answers to Paragraphs 1
15 through 49 of the Complaint.

16 51. In answer to Paragraph 51 of the Complaint, Defendants deny each and every
17 allegation contained therein.

18 52. In answer to Paragraph 52 of the Complaint, Defendants deny each and every
19 allegation contained therein.

20 53. In answer to Paragraph 53 of the Complaint, Defendants deny each and every
21 allegation contained therein.

22 54. In answer to Paragraph 54 of the Complaint, Defendants deny each and every
23 allegation contained therein.

24 55. In answer to Paragraph 55 of the Complaint, Defendants deny each and every
25 allegation contained therein.

26 56. In answer to Paragraph 56 of the Complaint, Defendants deny each and every
27 allegation contained therein.
28

1 57. In answer to Paragraph 57 of the Complaint, Defendants deny each and every
2 allegation contained therein.

3 **FIFTH CAUSE OF ACTION**

4 **Negligent Interference with Prospective Economic Advantage (Clients) – Against All**
5 **Defendants**

6 58. Defendants reallege and incorporate by reference their answers to Paragraphs 1
7 through 49 of the Complaint.

8 59. In answer to Paragraph 59 of the Complaint, Defendants deny each and every
9 allegation contained therein.

10 60. In answer to Paragraph 60 of the Complaint, Defendants deny each and every
11 allegation contained therein.

12 61. In answer to Paragraph 61 of the Complaint, Defendants deny each and every
13 allegation contained therein.

14 62. In answer to Paragraph 62 of the Complaint, Defendants deny each and every
15 allegation contained therein.

16 63. In answer to Paragraph 63 of the Complaint, Defendants deny each and every
17 allegation contained therein.

18 64. In answer to Paragraph 64 of the Complaint, Defendants deny each and every
19 allegation contained therein.

20 65. In answer to Paragraph 65 of the Complaint, Defendants deny each and every
21 allegation contained therein.

22 **SIXTH CAUSE OF ACTION**

23 **Intentional Interference with Prospective Economic Advantage (Employees) –**
24 **Against All Defendants**

25 66. Defendants reallege and incorporate by reference their answers to Paragraphs 1
26 through 49 of the Complaint.

27 67. In answer to Paragraph 67 of the Complaint, Defendants deny each and every
28 allegation contained therein.

68. In answer to Paragraph 68 of the Complaint, Defendants deny each and every allegation contained therein.

69. In answer to Paragraph 69 of the Complaint, Defendants deny each and every allegation contained therein.

70. In answer to Paragraph 70 of the Complaint, Defendants deny each and every allegation contained therein.

71. In answer to Paragraph 71 of the Complaint, Defendants deny each and every allegation contained therein.

72. In answer to Paragraph 72 of the Complaint, Defendants deny each and every allegation contained therein.

SEVENTH CAUSE OF ACTION

Negligent Interference with Prospective Economic Advantage (Employees) – Against All Defendants

73. Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 49 of the Complaint.

74. In answer to Paragraph 74 of the Complaint, Defendants deny each and every allegation contained therein.

75. In answer to Paragraph 75 of the Complaint, Defendants deny each and every allegation contained therein.

76. In answer to Paragraph 76 of the Complaint, Defendants deny each and every allegation contained therein.

77. In answer to Paragraph 77 of the Complaint, Defendants deny each and every allegation contained therein.

78. In answer to Paragraph 78 of the Complaint, Defendants deny each and every allegation contained therein.

79. In answer to Paragraph 79 of the Complaint, Defendants deny each and every allegation contained therein.

Defendants also deny each and every allegation contained in Plaintiff's prayer for judgment described on page 12 of the Complaint.

AFFIRMATIVE DEFENSES

Defendants hereby submit their Affirmative Defenses to Plaintiff's Complaint as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State Cause of Action)

The causes of action set forth in the Complaint fail to state facts sufficient to constitute any cause of action against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

The causes of action set forth in the Complaint are barred, in whole or in part, by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

The causes of action in the Complaint are barred, in whole or in part, by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The causes of action in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

The causes of action in the Complaint are barred, in whole or in part, by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The causes of action in the Complaint are barred by the applicable statute of limitations, including without limitation, California Code of Civil Procedure sections 335.1, 337, and 339.

SEVENTH AFFIRMATIVE DEFENSE**(Privilege)**

With respect to the causes of action set forth in the Complaint, any act alleged to have been performed by Defendants, if performed at all, was privileged by legitimate business necessity and/or other reasons.

EIGHTH AFFIRMATIVE DEFENSE**(Lack of Consideration)**

Any agreement alleged in the Complaint and any cause of action based thereon is void or voidable for lack of consideration.

NINTH AFFIRMATIVE DEFENSE**(Illegality)**

Each alleged agreement on which Plaintiff bases its causes of action, or on which the causes of action are predicated, is illegal and/or in contravention of public policy.

TENTH AFFIRMATIVE DEFENSE**(B & P § 16600)**

Each alleged agreement on which Plaintiff bases its causes of action, or on which the causes of action are predicated, is void under California Business & Professions Code section 16600.

ELEVENTH AFFIRMATIVE DEFENSE**(Ambiguity)**

Any alleged agreement on which Plaintiff bases its causes of action fails because it is vague and ambiguous as to material terms.

TWELFTH AFFIRMATIVE DEFENSE**(Punitive Damages)**

The imposition of punitive or exemplary damages in the circumstances of this case would violate the Constitution of the United States of America and the State of California and is barred by California Civil Code section 3294.

THIRTEENTH AFFIRMATIVE DEFENSE

(Good Faith)

Defendants aver that, at all times, they acted without malice and with a good faith belief in the propriety of their conduct.

WHEREFORE, Defendants pray that:

1. Plaintiff's Complaint be dismissed in its entirety with prejudice;
2. Plaintiff take nothing herein; and
3. Defendants be awarded costs and other such relief deemed just and proper by the Court, including, but not limited to an award for reasonable attorneys' fees.

Dated: September 27, 2007

CURIALE DELLAVERSON HIRSCHFELD
& KRAEMER, LLP

By: /s/ Zachary P. Hutton
Stephen J. Hirschfeld
Donna M. Rutter
Zachary P. Hutton

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